IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2475 OF 2003

Union of India through
Divisional Railway Manager,
Bombay Division, Western Railway,
Bombay Central, Mumbai-400 008. ... Petitioners

V/s

1. The Divisional Secretary,
   Paschim Railway Karmachari Parishad,
   Mumbai.

2. The Presiding Officer,
   Central Govt. Industrial Tribunal
   No.2, Sion, Mumbai-400 022. ... Respondents

Mr. Sureshkumar for the petitioners.

CORAM: DR. D.Y. CHANDRACHUD, J.

DATED: 20TH JULY, 2006

P.C.:

1. By an order dated 11th March, 1997, a Reference was made under Section 10 of the Industrial Disputes Act, 1947, for adjudication, to the Central Government Industrial Tribunal by the Government of India in the Ministry of Labour. The reference was in the following terms:-

"Whether the action of the Railway Manager, Western Railway not granting the benefit of the pay fixation and the arrears in respect of 17 workmen viz., Shri Vasant Shankar (SC), (ELF) ERB Gr.I and others with effect from the eligible date is justified or not ? If not, what relief should be granted:

Sr. No.	Name	Designation
1.	Shri Vasant Shankar (SC)	ELF (TRB)Gr.I
2.	Shri Suryanarayan B. Ahire	-,,-
3.	Shri Tribhuvan Singh	-,,-
4.	Shri Rahimatali M.	-,,-
5.	Shri Ram Baran R.	-,,-
6.	Shri Harischandra N.	-,,-
7.	Shri Zerihar Khiroda	-,,-
8.	Shri Sakharam R.	-,,-
9.	Shri Kashiram Krishna	-,,-
10.	Shri Sukha Jagroo	-,,-
11.	Shri Hrilal Bhagda	Khalasi/Helper
12.	Shri S. Natrajan	-,,-
13.	Shri Samsubhai B.Chavan (ST)	-,,-
14.	Shri D.M.Perinarayan (SC)	-,,-
15.	Shri N.M.Munuram yadunath (SC)	-,,-
16.	Shri Kaluram Prasad Ram Prasad	-,,-
17.	Shri Vithoba N. Gore	-,,-

2. A statement of claim was filed on behalf of the Paschim Railway Karmachari Parishad, Mumbai. The Union submitted that on the basis of the Railway Board’s orders, the General Manager, Western Railway passed orders upgrading Artisan staff and Helpers/Khalasis of

the Track Bonding Section of the Electrical Traction (Over-head) Department in the ratio of 50:10:40 (skilled, semi-skilled and unskilled). As against the ratio of 50% in the case of the skilled category, 20% were upgraded in the skilled Grade-I Scale Rs.380-560, 25% in the skilled Grade-II scale Rs.330-480 and 55% in the skilled Grade-III scale Rs.260-400. Accordingly, out of 17 employees concerned in the Reference, 5 employees in the ELF Skilled Grade-I, 5 employees in ELF skilled Grade-II and 7 employees from Helpers/Khalasis came to be upgraded with effect from 1st December, 1978 The Union's submission was that, even though the posts of 17 employees were upgraded with effect from 1st December, 1978, the pay of 5 employees at Sr.Nos. 1 to 5 in the order of Reference was not fixed in the skilled Grade-I category, the pay of the employees at Sr.Nos. 6 to 10 in skilled Grade-II category and of 7 employees at Sr.Nos. 11 to 17 in the grade of Helpers/Khalasis was not fixed from 1st December, 1978. The Union claimed that their juniors who were promoted/upgraded came to be further promoted to higher posts.

3. The management filed its written statement contending that only those employees who were promoted

against the upgraded posts were entitled to the fixation of pay with effect from 1st January, 1978. According to the management, the Union had not established or demonstrated as to which of the juniors of the applicant workmen were promoted.

4. Evidence was adduced on behalf of the Union by one Shri Jeevan Adhikari, Divisional Secretary of the Paschim Railway Karmachari Parishad. The cross-examination of this witness is important for the purposes of the present proceeding because the witness admited in the first instance that, it is a fact that if the employees whose claims were espoused are given promotion, other members of the union will be affected though they were not aware of the proceeding. The witness deposed thus -

> "It is a fact that if these members are given promotion, other members of our union will be affected. Other members are not aware if these workmen are given promotion they will be affected."

Moreover, the admissions of the witness would clearly demonstrate that he was not aware of the month in which

the workers were given promotions, or the month in which they were to get promotions or the time at which pay fixation was liable to be made. The witness admitted that these workmen had received proper payment and proper fixation from the date of their promotions and that promotions were given on the basis of seniority. The relevant admissions of the witness are as under:

> "I am not in a position to tell in which month the workmen were given promotions. Now I am not in a position to tell in which month they were to get promoted. I cannot tell from which month we want the pay fixation. I accept that these workmen received proper payment and proper fixation from the date of their promotions. Promotion is given on the basis of seniority-cum-suitability. If the person is not suitable, his junior found suitable will supersede the earlier man and gets the promotion. I am not in a position to tell which juniors were promoted. It is a fact that these workmen are given promotions in chain vacancies."

5. Another witness then came to be examined on behalf of the Union. This witness was Asharam G. Rajput. He claimed that he retired in July, 1996 and that he held the post of Divisional Secretary till the month of June, 1998. The witness admitted that he had no authority to represent the case. In the course of his cross-examination, the witness also made the following admission:-

> "None of the junior of Vasant Shankar were promoted w.e.f. 1.12.78. It is a fact that no junior to the workmen in the reference was promoted w.e.f. 1.12.78."

6. In the face of these clear admissions by the witnesses who deposed on behalf of the union, the Central Government Industrial Tribunal allowed the Reference to the extent that the management was directed to treat the cases of the 17 workmen concerned for upgradation w.e.f. 1.12.1978, to fix their pay and to pay the arrears of pay and allowances. The Tribunal noticed that it was not in dispute that no juniors to the employees concerned had been promoted by superseding their rights.

7. Having regard to the admissions made before the Tribunal particularly by the first witness, Mr. Jeevan Singh Adhikari, I am of the view that the Tribunal was clearly in error. Even the second witness on behalf of the Union was unable to establish any case for the grant of relief. That is made abundantly clear by the admissions that were elicited in the cross-examination of the witnesses. Therefore, there is merit in the contention of the petitioner that the Tribunal erred in grant of any relief despite the absence of any material evidence before the Court.

9. In this petition, the respondents have been served. The learned counsel on behalf of the petitioner states that two letters have also been addressed by the learned advocate for the petitioner dated 29th November, 2003 and 5th April, 2006 to the respondents. None appears on behalf of them.

10. The petition is accordingly allowed. Rule is made absolute in terms of prayer clause (a). In the circumstances, there shall be no order as to costs.

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